Testimony of

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on behalf of the

CONFERENCE OF STATE BANK SUPERVISORS

before the

FINANCIAL SERVICES COMMITTEE

Subcommittee on Financial Institutions and Consumer Credit

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Good morning, Chairman Bachus, Representative Sanders and members of the Subcommittee. I am Joe Smith, North Carolina Commissioner of Banks and Chairman of the Legislative Committee of the Conference of State Bank Supervisors' (CSBS). Thank you for asking us to be here today to share the views of CSBS on the Fair Credit Reporting Act.

CSBS is the professional association of state officials who charter, regulate and supervise the nation's over 6,300 state-chartered commercial and savings banks, and more than 500 state-licensed foreign banking offices nationwide.

CSBS Views on Preemption

The Conference of State Bank Supervisors formed more than 100 years ago, with states' rights as a keystone of its founding charter. The organization has a long history of supporting states' ability to charter and determine the powers of financial institutions. This system of state chartering and supervision has served our nation very well, and is the choice of charter for approximately 75% of commercial banks. Nearly every innovation in banking services, powers, structures and consumer protections has come out of the state system. Many academics point to the state system as the reason the U.S. has the world's most competitive and responsive banking system. It is also principally the state banking system that provides the fuel for the small business sector that serves as our economy's engine.

Federal Reserve Chairman Alan Greenspan has said that "[l]arge numbers of small banks go hand in hand with a macroeconomy characterized by large numbers of small, entrepreneurial nonfinancial businesses." In fact, most of our nation's state chartered banks are community banks – and a recent study conducted by the Federal Reserve System indicates that over 60% of commercial loans made to small businesses (loans less than $100,000) are extended by community banks. Chairman Greenspan has also said that our "decentralized and

diverse banking structure" was arguably the key to weathering the financial crisis of the late 1980s and so quickly returning to economic health. Contrast this with the centralized banking system of Japan, which has spent more than a decade in economic malaise.

Consolidation and centralization of authority and rulemaking are not always the best economic answer, or the best answer for bank customers and borrowers. As a result of this conclusion, state bank supervisors are strong advocates for a system that allows the states to serve as laboratories for innovation and change, not only in bank powers and structures, but also in the area of consumer protections. We believe in states' rights not as a theoretical principle, but because we have seen the evidence of its benefits to our states and our nation.

CSBS does, however, recognize the benefits of a dual system that recognizes national interests and national needs as well as local interests and needs. Since the creation of the Federal Reserve System and the Federal Deposit Insurance Corporation, national rules and standards have applied to state banks, and these have helped establish a stronger banking system that has, in turn, strengthened our economy.

Our system of banking needs to promote an efficient and effective banking industry that offers the best, most competitive options for financial institutions and their customers. Since consumer needs can vary considerably among regions, we believe that consumer protection is often best addressed at the state level. Thus, our nationwide system of banking should include a strong component of state supervisory authority and applicable state law. We acknowledge, however, that uniform nationwide standards, developed and enacted by the Congress, may be appropriate and desirable in some specific areas.

CSBS Policy on the Fair Credit Reporting Act

We must all acknowledge that technology has radically changed the world since the original enactment of the Fair Credit Reporting Act (FCRA) in 1970. Most would agree that this technology revolution has benefited both our financial institutions and the consumers they serve. It has also changed the needs, demands and expectations of both the industry and its customers.

Congress's 1996 review of FCRA was long overdue. That revision included experimental preemptions of state authority to enact laws in several areas related to information sharing[1], with some exceptions for California, Massachusetts and Vermont. These preemptions passed with little debate at the time, and we welcome the opportunity to discuss them today.

Good information about borrowers is essential to a financial institution's ability to make safe and sound lending decisions. Bank supervisors have always demanded that the institutions they regulate make decisions based on solid data. Technology has revolutionized the information base of credit decisions and now allows financial institutions to extend credit to individuals with whom they never could have imagined they would have relationships. Much of this revolution has occurred since the 1996 FCRA amendments.

Theoretically, this revolution – supercharged by the Internet -- should benefit the prudent consumer of financial products, as institutions can compete for their business based on their credit records. This theory seems to hold up when we observe recent innovations in consumer and mortgage finance, their broadening markets and decreased costs. Underlying this six trillion dollar market is a credit information system supported by the FCRA.

Observing the many benefits of technology-powered credit information sharing, and recognizing that an efficient information network requires standards and consistency, CSBS adopted a policy in March of this year to support the permanent extension of the 1996 FCRA preemptions, retaining the exceptions acknowledged at that time.

While we generally oppose preemption, we believe that the benefits of uniformity to our credit granting system, and the value of this system to consumers and our economy, outweigh our objections.

Economic research is just developing on the impact of allowing a broader variety of state-level credit reporting laws, but the credit-granting system is so important to the health of our financial institutions and their ability to serve their customers that we believe the Congress should take action before the current FCRA preemptions expire.

Other Preemption Issues

CSBS's support for preemption in this area does not imply support for the growing preemption of other state consumer protection laws. The federal chartering agencies – the Office of the Comptroller of the Currency and the Office of Thrift Supervision – continue to preempt state consumer protection laws without the kind of public debate we are having today.

The OTS does not even publish its preemptive decisions, because the agency believes that the Home Owners' Loan Act does not require it, and because Congress has not applied to the OTS the guidelines for preemption articulated in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

[1] The affected areas are the content of consumer reports, liability for those who provide information to consumer reporting agencies, prescreening procedures, adverse action requirements, content of disclosures, exchange of information among affiliates, and the time periods for disputing the accuracy of reports.

Additionally, recent OCC proposals and court decisions sought by the agency are making the issue of applicable state law discussed here today moot.

The states are increasingly concerned about the growing pervasiveness and boldness of OCC and OTS preemption, which these federal entities now claim reaches traditionally state-licensed and regulated operating subsidiaries of their federally chartered institutions.

. The OCC has asserted that the National Bank Act authorizes these preemptions, and that the agency is merely implementing congressional intent. The OTS makes similar claims.

CSBS respectfully disagrees. We believe that regulatory interpretations have moved away from well-considered public policy into the realm of loophole–lawyering. It is one thing for the Congress to debate policy openly and publicly, and then establish federal standards. It is quite another when a regulator proposes cleverly-worded interpretations that a clear reading of the law would not support. At a minimum, a clearer articulation of OCC and OTS standards of preemption would lessen the legal burden of litigation over the federal regulators' sometimes tenuous interpretations of applicable law.

We ask Congress to exercise its oversight role in reviewing the growing expanse of state consumer protection laws being preempted for national banks, federal thrifts and their subsidiaries. We hope that the Committee and the Congress might extend its interest in the legislative preemptions of the FCRA to other areas of consumer law preemption by the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

Conclusion

CSBS holds federal preemption of state laws and authority to a very high standard. Our rapidly developing technology-based credit system has benefited consumers and our economy, and depends on reliable information and a consistent environment. Recognizing this, CSBS supports extending the temporary preemptions contained in the 1996 amendments to the FCRA.

CSBS is committed to working with the Congress to address the needs of an evolving nationwide financial services system in a way that respects the interests of all our nation's financial services providers and minimizes regulatory burden, while also protecting our nation's consumers.

I would be pleased to answer any questions members of the Subcommittee might have.